

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1220

SPONSOR: Comprehensive Planning Committee, Judiciary Committee, Senator Fasano and others

SUBJECT: Sale of Real Property

DATE: April 7, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute (CS) creates a requirement on a seller of real property in a deed restricted community to provide a copy of the recorded restrictive covenants to the buyer. The term “deed-restricted community” is defined. Each contract for the sale of real property in such a community must include a clause which either indicates that the buyer acknowledges the receipt of such deed restrictions more than three days prior to the execution of the contract, or that the contract is voidable within three days of receipt of the restrictive covenants or the execution of the contract, whichever is later. This CS provides that a contract which does not conform to such requirements is voidable at the option of the buyer prior to the time of closing.

Under the CS, a disclosure form providing notice of whether there is a requirement to be a member of a homeowners’ association and whether there is an obligation to pay assessments to a homeowners’ association or a municipality must be provided to all prospective purchasers of property in a residential area.

In addition, this CS revises the disclosure requirements that must be provided to prospective purchasers of real property. A contract for the sale of property governed by covenants subject to disclosure under s. 689.26, F.S., must contain a voidability clause, in the same form as provided for in statute, and is voidable at the option of the purchaser prior to closing if it does not have such clause.

This CS creates a new section of the Florida Statutes and amends section 689.26 of the Florida Statutes.

II. Present Situation:

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.

Section 720.301(7), F.S., defines a "homeowners' association" as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

However, not all homeowners associations are regulated by ch. 720, F.S. "Non-mandatory homeowners associations" are voluntary associations established to provide defined benefits or services to homeowners who choose to participate. Usually these associations are incorporated for a specific purpose, such as road paving, neighborhood beautification, etc. Such associations do not have the power to enforce assessments – all financial or other contributions are contractual or voluntary.

Section 689.26, F.S., requires that a prospective purchaser of property in a mandatory homeowners association be presented a disclosure summary prior to executing a contract for sale. The intent of the disclosure is to inform prospective buyers that they will be required to become a member of the homeowners association and will be obligated to pay assessments to the association.

Standard form contracts for the sale of real property by a non-developer seller to a non-developer purchaser are required to indicate that the purchaser is on notice of restricted covenants on the property. *See* Ralph Boyer, Florida Real Estate Transactions, § 4.25; ch. 24 (2002). However, sellers are not required to provide a copy of the restricted covenants, and neither the purchaser nor anyone associated with the purchaser are obliged to obtain a copy of the restricted covenants prior to executing the contract.

Section 689.26, F.S., specifies the form and contents of the disclosure summary, and provides that the disclosure be supplied by the developer, or by the parcel owner if the sale is by an owner other than the developer. The disclosure summary is as follows:

DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.
2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT IN A LIEN ON YOUR PROPERTY.

5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. (If such obligation exists, then the amount of the current obligation shall be set forth.)

6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS.

8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

DATE:

PURCHASER:

PURCHASER:

This disclosure requirement does not apply to any condominium, cooperative, vacation or timeshare, or mobile home park association. If membership in the homeowners association is not mandatory, the seller is not required to provide the prospective buyer with this disclosure summary.

III. **Effect of Proposed Changes:**

Section 1 directs the seller who is not the developer of a piece of real property in a deed-restricted community to provide to the buyer of such property a current copy of the recorded deed restrictions that apply to the property. This CS provides that a person licensed under part I of ch. 475, F.S., i.e., real estate brokers and salespersons, who obtains the documents that contain the restrictive covenants to the deed is not liable for errors or inaccuracies contained in the documents.

Each contract for the sale of property in a deed-restricted community must contain one of two clauses:

- That the buyer acknowledges that he or she has been provided a current copy of the restrictive covenants for more than three days prior to the execution of the contract; or
- That the contract is voidable by the purchaser by delivery of written notice within three days of the date of execution of the agreement or the receipt by the buyer of a current copy of the deed restrictions, whichever is later; that any purported waiver of the voidability rights has no effect; that the buyer may extend the time to closing by three days; and that the buyer's right to void the agreement terminates at closing. (The three-day time period referenced in this section excludes Saturdays, Sundays, and legal holidays.)

A contract that does not conform to this section is voidable at the option of the buyer prior to closing.

Section 2 amends s. 689.26, F.S., to revise the disclosure requirements that must be provided to prospective purchasers of real property, and will implicitly require that the disclosure be provided to buyers in neighborhoods.

Sellers will be required to specify whether or not property purchasers will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to the municipality. The notice must also state whether or not the restrictive covenants of the association can be amended with the approval of the membership or, if there is not a mandatory association, the parcel owners. The committee substitute encourages prospective purchasers to refer to the actual governing documents and covenants *prior* to purchasing the property.

In addition, this CS amends s. 689.26, F.S., to revise the disclosure requirements that must be provided to prospective purchasers of real property. A contract for the sale of property governed by covenants subject to disclosure under s. 689.26, F.S., must contain a voidability clause, in the same form as provided in statute, and is voidable at the option of the purchaser prior to closing if it does not have such clause. The clause allows a buyer to void a contract by sending written notice of intent to cancel within 3 days of executing the contract, excluding Saturdays, Sundays, and legal holidays. The buyer's right to void the agreement terminates at closing.

Section 3 provides the CS shall take effect on July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS will provide an extra measure of disclosure in those instances where real property in a deed-restricted community is purchased from a non-developer. Arguably, the additional notice will give such purchasers the opportunity to examine the restrictive covenants for the property for restrictions which may interfere with certain activities of the purchaser. Such review may allow for reconsideration of the purchase where the restrictions may prove too onerous for the purchaser.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS is patterned, in part, after the disclosure requirements found in s. 718.503(2), F.S., requiring the non-developer seller of a condominium unit to provide a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, and a copy of certain financial information; providing a waiver of liability for errors and inaccuracies for real estate brokers and salespersons who provide such documents; providing for inclusion in the contract of either a buyer acknowledgement clause or a buyer voiding clause; and providing that any contract that does not conform to the provisions of the paragraph is voidable at the option of the purchaser prior to closing.

VIII. Amendments:

None.